S.B. CIVIL MISC. APPEAL NO926/2006
(Sukhlal alias Sukhubhai & anr. Vs. Ashok Vaishnav & ors.)

DATED : 17.07.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Pushpendra Singh with Mr.Devraj Singh Rathore for the appellants.

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At the commencement of submissions, learned counsel for the appellants candidly submitted that age of appellant No.1 has been stated before the Tribunal at 55 years and per mistake it has been mentioned as about 45 years in the cause title of the present memo of appeal. Be that as it may, learned counsel for the appellants has been heard at length on the merits of the case and the impugned award has been examined.

By way of this appeal the claimant-appellants seek to challenge the award dated 27.03.2006 made by the Motor Accident Claims Tribunal [Addl. District Judge (Fast Track) NO.6], Udaipur in Claim Case No.731/2005; and seek enhancement over the compensation amount of Rs.4,53,000/- awarded by the Tribunal on account of accidental death of their son Sanjay Chandani, aged 22 years.

Brief relevant facts are that on 05.02.2004 at about 9.30 p.m., the deceased Sanjay Chandani, while riding his

motorcycle near Sector No.8 Main Road, Udaipur, was hit by a Maruti Van bearing registration No. RJ 27 1C 0832; the deceased sustained injuries, fell unconscious and died on the spot. The present appellants, parents of the deceased, claimed compensation on account of death of Sanjay Chandani stating his age at 22 years, being engaged in 'Kabadi' business and earning about Rs.10,000 to Rs.15,000/- per month.

The learned Judge of Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid Maruti Van and held the respondents liable for compensation. While taking up quantification of compensation, the learned Judge referred to the income-tax return Ex.14 filed by the deceased showing his income at Rs.60,669/- and in the overall circumstances opined that the income of the deceased could be reasonably taken at Rs.5,000/- per month i.e. Rs.60,000/- per annum but could not be taken at Rs.10-15 thousand per month, as alleged by the claimants. Learned Judge found that the claimant No.1 gave out his age at 55 years, therefore, his age was 53-54 years at the time of accident and the parents of the deceased, therefore, fall in the age group of 50 to 55 years. Learned Judge observed that for the loss of dependency, with reference to the age group of the claimants, it would be proper to apply the multiplier of 11; and after

deducting 1/3rd for personal expenditure of the deceased, in the overall circumstances took the loss of income at Rs.40,000/- per annum and hence, calculated pecuniary loss at Rs.4,40,000/-. The learned Judge also allowed Rs.2000/- for funeral expenses, Rs.1000/- transportation charges and Rs.10,000/- as non-pecuniary compensation towards loss of love, affection and services. Claim for property loss regarding motorcycle repairing has been denied. The Tribunal has, therefore, made an award in the sum of Rs.4,53,000/- in favour of the claimants and allowed them interest at the rate of 6% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants has contended that looking to the age and income of the deceased and his future prospects, the amount awarded by the Tribunal remains too low and deserves suitable enhancement. Learned counsel strenuously contended that when the income of the deceased at 22 years of age has been shown even in the return at Rs.60,000/- per annum, there was no justification for the Tribunal to have not provided for reasonable future prospects and not taking income of the deceased at least at Rs.10,000/- per month for a multiplicand of Rs.1,20,000/- per annum. Learned counsel further submitted that multiplier of 17 ought to have been applied minimum in the circumstances of

the case and In view of the loss of their son, claimants ought to have been awarded substantial amount towards non-pecuniary loss.

Having examined the considerations adopted by the Tribunal and the award in its totality this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

The deceased was 22 years of age and earning as a scrap-merchant. The Tribunal has taken his income shown in the last income-tax return as the base figure and of course has not provided for future prospects but has provided not more than one third deduction and has applied the maximum multiplier of 11 as could be allowed in the case in view of the age of the claimants and has arrived at a figure of Rs.4,40,000/- towards pecuniary loss. Reasonable amount towards non-pecuniary loss, towards funeral expenses and transportation charges have been allowed. Submission of the learned counsel that the income ought to have been taken at Rs.10,000/- per month cannot be accepted in the circumstances of the case and particularly in view of the fact that the Tribunal is required to take the certainties as well as uncertainties into account. In the circumstances of the case where the

claimants are in the age group of 50-55 years, multiplier of 17 with reference to the age of the deceased could not have been provided and in view of reduction in multiplier also, the assessment of multiplicand on the basis of the last shown income of the deceased cannot be said to be wholly unjustified. Quantification of non-pecuniary loss as well as funeral expenses and transportation charges is also reasonable. Claim for enhancement on non-pecuniary loss is not justified inasmuch as such figure remains that of general damages and cannot be claimed as a substitute for pecuniary loss figures. The Tribunal has of course awarded interest only at the rate of 6% per annum but in view of the reasonable award made by the Tribunal and the prevailing rates, such choice of rate of interest cannot be said to be unjustified.

Having regard to the overall facts and circumstances of the case, this Court is clearly of the opinion that the impugned award cannot be said to be grossly inadequate so as to warrant interference in appeal.

In this view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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